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March 3, 2010

Energy and Technology Committee
Connecticut General Assembly
Room 3900, Legislative Office Building
Hartford, CT 06106

STATEMENT OPPOSING PROPOSED RAISED BILL. No. 6460, AN ACT CONCERNING PUBLIC ACCESS CHANNELS.

Dear Chairs and Members of the Committee:

This office serves as legal counsel for Sound View Community Media, Inc. On its behalf I hereby request that this statement in opposition to R.B. No. 6460 be accepted on the record of your proceedings today as written testimony.

1. Raised Bill No. 6460 is unconstitutional. It targets only one third-party nonprofit community access organization, Sound View Community Media, Inc. Its passage will put people out of jobs, and it will negatively impact Bridgeport's and Stratford's government and educational programming, along with the hundreds of public access producers from Bridgeport and five surrounding communities.

Sound View Community Media, Inc. is the non-profit community access television provider that has studio, editing and office facilities in downtown Bridgeport that serves all of Bridgeport, Fairfield, Milford, Orange, Stratford, and Woodbridge. It is a technological leader among other Connecticut community access centers in providing state-of-the art technical

equipment, instruction and other resources that enable educational institutions, local governments and ordinary citizens from Bridgeport and five other surrounding communities to create television programming.

When Public Act 07-253 opened the door for other video distribution companies to compete with the traditional cable television companies, Sound View was the first independent, nonprofit community access provider (CAP) to enter into an interconnection with a certified competitive video service company (AT&T). That agreement process went smoothly and timely, and Sound View and AT&T continue to enjoy a favorable relationship.

Unfortunately, a few independent volunteer groups based in some of the six communities served by Sound View desired full independence from Sound View. They wanted only their own local government and education productions to be distributed to the subscribers within their particular communities. They further did not want any local government or educational programs from outside their communities to be seen by subscribers in their communities. Because these groups further had representatives that comprised the majority of the participating membership of the local cable advisory council, the local cable advisory council sought for these independent programming groups a portion of the funds collected generally from all subscribers. The funds sought by the local cable advisory council included even a portion of those funds collected from subscribers who would not be able to view their programming.

During the 2008 legislative session representatives of these groups who, again, also comprised the majority of the active, participating membership of the local cable advisory

council, persuaded a local legislator who represents Fairfield to introduce H.B. 5814. She drafted H.B. 5814 so as to apply only to Sound View. It aimed to overrule then-applicable law, Department of Public Utility Control (DPUC) regulations, and DPUC decisions, but only as they applied to Sound View, all of which, to that point, favored Sound View's position. Sound View's detractors have a history going to this particular Fairfield legislator for help in overruling decisions of the DPUC when its decisions do not "go their way." R.B. 6460 continues this trend with the inclusion of another special provision in Sec. 2 to require subscriber funding to be disbursed to these groups in two annual installments. The DPUC reviewed this very matter as part of a formal Docket, 08-06-03, and on January 8, 2010 denied this request.

It is a credit to the 2008 Energy and Technology Committee that it did not vote out of committee H.B. 5814. However, in the closing hours of that legislative session, H.B. 5814's proponents circumvented the Energy and Technology Committee with a slick parliamentary maneuver. Using an unrelated bill as a vehicle, S.B. 677 -- "An Act Concerning the Use of State Mobile Computing and Storage Devices," an eleventh-hour amendment deleted all of S.B. 677's text and substituted the language of H.B. 5814. When S.B. 677 came to a vote its title remained on the list as "An Act Concerning the Use of State Mobile Computing and Storage Devices." With only a few minutes remaining in the Session exhausted legislators passed it. Even Sound View's supporters unwittingly voted for S.B. 677, having no idea that it was the text of H.B. 5814 with a misleading title. Only later was the title "corrected." Governor Rell subsequently

allowed the bill to become law without her signature. In this way Public Act 08-159, targeting and affecting only Sound View, came about.[1]

Sound View asserts that Public Act 08-159, which R.B. 6460 seeks to amend and amplify, is unconstitutional. Though its language was written to apply to "any" third-party nonprofit community access provider serving six municipalities, it and R.B. 6460 are applicable only to Sound View. This may avoid the political opposition that would have been generated had it applied equally to all other similarly-situated third-party nonprofit CAPs. However, by limiting its effect to Sound View, Public Act 08-159 and R.B. 6460 violate Sound View's federal and state constitutional rights to "equal protection"[2]

Now, proposed R.B. 6460 seeks to double the harm imposed on Sound View. It would reduce Sound View's annual funding by $200,000, an arbitrary number that lacks any justification. Presently, $100,000 is taken from Sound View's funding, but the additional $100,000 that would be imposed by R.B. 6460 would be too much for Sound View to bear. Sound View cannot remain in business and maintain its present facilities and staff with a $200,000 annual "hit" to its funding. Its six full-time employees who work in its downtown Bridgeport facilities will lose their jobs. Bridgeport and Stratford, whose local government and

[1] The Fairfield legislator bragged in an article on the front page of the Connecticut Post published Sunday, June 8, 2008 about how she and a colleague in the Senate "choreographed" this "slick political move" at an off-session meeting at a Fairfield Starbucks.

[2] The Connecticut Supreme Court invalidated a similar legislative enactment that was aimed solely at one company. City Recycling, Inc. v. State of Connecticut, et al., 257 Conn. 429 (2001). However, rather than undertake a costly court challenge Sound View decided at that time to accept the reduction of its funding annually by $100,000 in the hope of ending the dispute with the local cable advisory council.

educational programs are produced with Sound View's equipment and support will be curtailed.[3] And the hundreds of public access producers who use Sound View's Bridgeport facilities will no longer have access to Sound View's state-of-the art television production facilities. Even the surrounding businesses in downtown Bridgeport will be negatively affected when this level of activity at Sound View's facilities is gone.[4]

Public Act 08-159 and R.B. 6460[5] are unconstitutional because they single out Sound View for disparate and punitive treatment. No other third-party nonprofit community access provider is or will be impacted. After Governor Rell allowed Public Act 08-159 to go into effect, Sound View felt at that time it could not undertake a costly court challenge to invalidate it. It decided, instead, to accept the annual $100,000 reduction of its funding in the hope that it would satisfy the members of the local cable advisory council whose independent programming associates were to benefit from the funds. In addition, it gave them their desired complete independence from Sound View. However, proposed R.B. 6460 now makes it clear that nothing short of Sound View's evisceration will satisfy them.

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[3] The unfairness of R.B. 6460 to Bridgeport and Stratford subscribers who comprise more than 50% of all the subscribers in the franchise area is revealed fully when one considers that Bridgeport and Stratford subscribers' funds will be distributed to smaller, wealthier communities solely to support their local government and educational programming at levels that exceed what is collected from subscribers in those wealthier communities.

[4] Sound View's activities are detailed annually in a report it files with the DPUC. This report is available to anyone who accesses the Department's website.

[5] R.B. 6460 attempts to obfuscate the precise targeting language of P.A. 08-159 by changing its language so as to be applicable to only third-party nonprofit community access providers that serve not less than six municipalities with a least one municipality having a population of more than 100,000. **Nonetheless, even with the changes the language still causes the law to be applicable only to Sound View.**

2. Raised Bill 6460 diverts $200,000 annually from funds collected from video subscribers and pays it to a local cable advisory council that no longer legally exists.

The regulatory regimen established by Public Act 07-253 came with the expectation that those legacy cable television companies operating under the old certificates of public convenience and necessity (CPCN) would be changing to certificates of *cable* franchise authority (CCFAs). This was an important assumption because each CCFA company would maintain the local cable advisory council and succeed to other responsibilities that had been shouldered by the legacy cable companies.[6] What was not anticipated was that Cablevision, a multi-system operator in the Bridgeport area, would be able to thwart this expectation. Clever legal maneuvering involving transfers of CVFAs between its three companies resulted in the Bridgeport, Norwalk, and Litchfield Franchise Areas having no cable operator or company operating under a CCFA. Instead, these areas are served only by companies holding CVFAs.[7] As a result, the group formerly comprising the local cable advisory councils in Bridgeport and the other Cablevision franchise areas have no CCFA to advise and have no basis for receiving

[6] See Sec. 16-331t, which requires the holder of a CCFA to fund the local advisory council and meet with it at least twice each year. This essentially keeps the local advisory council that advised the company while it operated under a CPCN in legal existence. Holders of CVFAs fund and meet only with a state-wide video advisory council.

[7] Three Cablevision companies in Connecticut received certificates of video franchise authority (CVFAs) from the Department for virtually all of the State of Connecticut, excluding from each company's certificate that area in which it operated a traditional cable TV system. One of these, Cablevision of Connecticut, L.P., then operating under a traditional cable franchise in the Norwalk area (Area 9), received a certificate of video franchise authority (CVFA) from the Department for most of the State including the Bridgeport Area (Area 2). See Docket No. 08-06-12, letter dated July 2, 2008 from Nicholas E. Neeley, Acting Executive Secretary, to Paul Jamieson, Senior Counsel for Cablevision Systems Corporation, reference 08-06-12 CATV. On July 7, 2008, Cablevision gave notice of the transfer of the CVFA of Cablevision of Connecticut, L.P. to Cablevision Systems of Southern Connecticut, L.P, which is the Cablevision-affiliated company operating as the incumbent cable operator in the Bridgeport area (Area 2). Taking similar steps with its other companies, Cablevision, using a "round robin" of transfers of its three CVFAs, was able to achieve a legal result whereby its Connecticut companies formerly operating under traditional cable franchises are now operating under CVFAs in their incumbent franchises. It achieved this in spite of provisions in P.A. 07-253, whereby the legislature clearly intended that any incumbent cable operator facing a competitor in its territory would have to apply for and get a certificate of *cable* franchise authority (CCFA) in order to avoid the more burdensome traditional cable regulation. Cablevision figured out a way to acquire certificates of *video* franchise authority (CVFAs) for its incumbent cable companies because the legislature left this door open by allowing the free transferability of CVFAs. With no cable operator or holder of a CCFA in the franchise areas, the local cable advisory councils in the Bridgeport, Norwalk and Litchfield areas have no legal basis for their existence.

funding. In other words they no longer have legal purpose or existence. Since these franchise areas have only two or more CVFAs providing competitive video services, the video service providers are required only to meet with and support a statewide video advisory council.

It is true that presently Cablevision, at its discretion, chooses to "voluntarily" work with and fund the groups that formerly comprised the local cable advisory councils. However this, of course, is subject to change should the circumstances no longer suit Cablevision. The result of Cablevision's brilliant legal maneuver to avoid any obligations of a CCFA is the creation of a huge and gaping legal abyss into which the local advisory councils in these franchises have disappeared.

Public Act 08-159, if amended by R.B. 6460, will mandate payment of $200,000 annually to these "groups" that have no legal existence or legal purpose. What is further disturbing is that some members of the former local cable advisory council, primarily from Fairfield, appear to have personal or financial ties to those individuals[8] that actually receive some of the subscribers' funds directed by the group. This presents accountability and conflict-of-interest problems at best and, at worst, an unmonitored opportunity for reckless squandering of these subscribers' funds for self-serving purposes.[9] The continued administration of large sums of subscriber money by the group formerly comprising the local cable council should not be

[8] Some of the individuals formerly comprising the membership of the now defunct local cable advisory council in the Bridgeport Area have long had personal or professional ties to the individuals who are the actual recipients of some of the subscriber funds redistributed by the group..

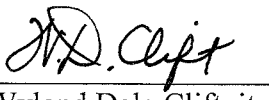
[9] In contrast to the legal limbo and uncertainty into which the $200,000 of subscriber funds proposed by R.B. 6460 would be transferred, continued receipt of subscriber funds by Sound View is ascertained and accounted for legally. Sound View is a community access provider (CAP) pursuant to State law. It is a corporation recognized as exempt under Sec. 501(c)(3) of the Internal Revenue Code. It is governed by a community-based board of directors. And it further has an independent audit of its books conducted annually as required under Connecticut law and DPUC directive.

increased by R.B. 6460. In fact, Public Act 08-159 should be repealed. Jurisdiction in the Bridgeport area franchise over the use of funds collected from subscribers for support of community access instead should be returned to the DPUC and governed by same laws that apply to all community access providers equally.

Due to the sudden appearance of R.B. 6460 and its being scheduled nearly immediately for public hearing, Sound View is not able to testify orally today. Nonetheless, we respectfully request that this written statement be included on the record as Sound View's testimony. If any legislator has any questions regarding the matters addressed herein, he or she is welcome to contact the undersigned.

Respectfully submitted,

SOUND VIEW COMMUNITY MEDIA, INC.

By: 

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